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COMPLIANCE RULING

In the matter of the Department for Aging and Rehabilitative Services
Ruling Number 2022-5360
February 11, 2022

The grievant has requested a ruling from the Office of Employment Dispute Resolution (“EDR”) at the Virginia Department of Human Resource Management regarding the alleged failure of the Department for Aging and Rehabilitative Services (the “agency”) to comply with the time limits set forth in the grievance procedure for responding to her grievance.

FACTS

On or about June 3, 2021, the grievant initiated an expedited grievance¹ with the agency raising perceived issues with her compensation and position classification. The grievant states that she received the single management step response by email on July 19.² The grievant subsequently requested qualification of her grievance for a hearing on July 23 and met with the agency head on August 4. After she apparently received no further response from the agency, the grievant emailed the agency head on August 17 to ask about the status of her grievance. The agency head responded on the same day, explaining that she was not going to qualify the grievance and would “complete the Grievance paperwork and get it back to [the grievant].”

The agency appears to have completed an additional review of the grievant’s compensation and classification in October 2021, concluding again that she is appropriately classified in her current Role. The grievant sent an email to the agency head and other members of management on December 8, 2021, following up on the status of her grievance and questioning compliance with the grievance procedure. She further indicated her continued disagreement with the outcome of the agency’s classification review and the delays in communication with her about the review. The grievant subsequently requested a ruling from EDR on February 2, 2022, arguing that the agency head failed to provide her with a written qualification decision as required by the grievance procedure.

¹ The agency uses the expedited process for all grievances. *See Grievance Procedure Manual* § 3.4 (“[A]n agency may also elect to utilize the expedited process for all or certain categories of grievances.”)

² The agency appears to have sent the response to the grievant on July 8, but she was on leave at the time through July 18.

While this ruling was pending, the agency issued a qualification decision on February 8, 2022 declining to qualify the grievance for a hearing and advising the grievant of her right to appeal the qualification decision to EDR.

DISCUSSION

The grievance procedure requires both parties to address procedural noncompliance through a specific process.³ That process assures that the parties first communicate with each other about the noncompliance, and resolve any compliance problems voluntarily, without EDR's involvement. Specifically, the party claiming noncompliance must notify the other party in writing and allow five workdays for the opposing party to correct any noncompliance.⁴ If the opposing party fails to correct the noncompliance within this five-day period, the party claiming noncompliance may seek a compliance ruling from EDR, who may in turn order the party to correct the noncompliance or, in cases of substantial noncompliance, render a decision against the noncomplying party on any qualifiable issue. When an EDR ruling finds that either party to a grievance is in noncompliance, the ruling will (i) order the noncomplying party to correct its noncompliance within a specified time period, and (ii) provide that if the noncompliance is not timely corrected, a decision in favor of the other party will be rendered on any qualifiable issue, unless the noncomplying party can show just cause for the delay in conforming to EDR's order.

Section 4.2 of the *Grievance Procedure Manual* states that “[w]ithin five workdays of receiving the employee’s hearing request, the agency head must determine whether the grievance qualifies for a hearing.” The agency head’s response must be “on the Grievance Form A or an attachment” and “should also notify the employee of their procedural options.”⁵ In this case, the grievant requested qualification from the agency on July 23, 2021. She later met with the agency head to discuss the grievant on August 4. Although the agency head clearly indicated to the grievant in an August 17 email that the grievance would not be qualified for a hearing, the agency does not appear to have provided the grievant with a written qualification decision or completed the appropriate section on the Grievance Form A at that time as required by the *Grievance Procedure Manual*.

The grievant’s December 8, 2021 email states that the agency “is actually out of compliance with our own grievance policy” and describes the sequence of events after she initiated her grievance. However, she also discussed at some length her concern about delays in, and the outcome of, the agency’s October 2021 classification review, and thus may not have clearly articulated her assertion that the agency had failed to comply with the grievance procedure. Under the circumstances, however, the December 8 email appears to have been sufficient to provide the agency with notice of its alleged noncompliance.

The grievant is correct that the agency failed to provide her with a qualification decision in a timely manner. The grievant then gave the agency notice of its alleged noncompliance on December 8, which was not resolved until she requested this ruling from EDR. Nonetheless, it is clear that the grievant has now received the agency head’s qualification decision in writing, as required by the grievance procedure. We therefore find that the grievant’s claim of noncompliance

³ *Grievance Procedure Manual* § 6.3.

⁴ *See id.*

⁵ *Id.* § 4.2.

is moot because it has been corrected by the agency and we will take no further action on this issue.

In addition, the grievant appears to argue that the agency's failure to provide her with a timely qualification decision should be considered substantial noncompliance with the grievance procedure and, as relief, she "ask[s] that EDR render a decision." Although the grievance statutes grant EDR the authority to render a decision on a qualifiable issue against a noncompliant party in cases of substantial noncompliance with the grievance procedure,⁶ we favor having grievances decided on the merits rather than procedural violations. Thus, EDR will *typically* order noncompliance corrected before rendering a decision against a noncompliant party. The agency's actions here do not rise to the level that would justify a finding of substantial noncompliance or the extreme sanction of awarding substantive relief in favor of the grievant at this time.

CONCLUSION

For the reasons set forth above, EDR finds that the agency has corrected its noncompliance and there are no other outstanding matters to be addressed at this time. The parties should therefore proceed as required by the grievance procedure. The grievance process was temporarily halted for EDR to address the grievant's claim of noncompliance.⁷ Because the grievant has received the agency head's qualification decision, she should respond to the agency's Human Resources Office within five workdays, indicating whether she wishes to conclude her grievance or appeal the qualification decision to EDR.⁸

EDR's rulings on matters of compliance are final and nonappealable.⁹

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⁶ Va. Code § 2.2-3003(G).

⁷ *Grievance Procedure Manual* § 6.1 (stating that a challenge of alleged noncompliance to EDR "will normally stop the grievance process temporarily")

⁸ *Id.* § 4.3.

⁹ *See* Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).